(1967) 07 KAR CK 0013

In the Karnataka High Court

Case No : Writ Petition No. 1046 of 1966

G. Venkata Naidu APPELLANT

Vs

Bellary Central Co-operative Stores Ltd. and Others RESPONDENT

Date of Decision : 14-07-1967

Acts Referred:

Constitution of India, 1950 — Article 14, 228
Mysore Co-operative Societies Act, 1948 — Section 121, 130, 54

Citation : AIR 1967 Kar 203 : (1967) 2 MysLJ 256

Hon'ble Judges : M. Sadasivayya, J;D.M. Chandrashekhar, J

Bench : Division Bench

Advocate : V. Krishna Murthy and Tarakaram, for the Appellant; E.S. Venkataramaiah, H.C. Spl. Govt. Pleader and B.V. Deshpande, for the Respondent

Judgement

Chandrashekhar, J.—Bellary Central Co-operative Stores Ltd., Bellary (hereinafter referred to as the ''Society''), is a Co-operative Society with limited liability of its shareholders. The Society has been doing extensive business in consumer goods in Bellary District, in the year 1955, the Society started a Sugar Factory at Kampli near Hos-pet. The State Government has given to the Society aid of more than Rupees three lakhs in the form of share-capital, loans, and guarantee for loans taken by the Society for its activities in consumer goods The Government has also subscribed Rs. 16 lakhs towards the share capital for the said Sugar Factory.

2. In exercise of the powers conferred by Sections 54 and 121 of the Mysore Co operative Societies Act. 1959 (hereinafter referred to as the ''Co-operative Act''), the Government Issued a Notification (marked document A) on 14-6-1966. By this Notification Section 29 of the Co-operative Act has been modified in relation to this Society so as to enable the Government to nominate us its representatives 6 persons as members of the Committee of this Society of whom one shall be the Chairman and Managing Director. By this Notification bye-law 18(a) (v) of the Society has been amended to provide for nomination of fl

persons of whom one shall be the Chairman and Managing Director

3. By its order, dated 14/16-6-1966 (marked as document B), the Government nominated Sri . J. T. Viswanathan of the Mysore Administrative Service as Chairman and Managing Director and the following 5 officers of the Government as Directors of the Society:

2. The Registrar of Co-operative Societies In Mysore, Bangalore, or his nominee

3. The Director of Agriculture in Mysore, Bangalore or his nominee.

4. The Deputy Commissioner. Bellary.

5. The Director of Industries and Commerce or his nominee

6. The Deputy Secretary to Government of Mysore. finance Department.

4. In this petition under Article 228 of the Constitution the petitioner who is a shareholder of the Society has challenged the Notification (document A) and the Government Order (document B). He has also asked for striking down Sections 64 and 121 of the Cooperative Act as being unconstitutional. The petitioner has also sought for restraining the Chairman and Managing Director and five other nominated Directors (who have been impleaded as respondents 3 to 8) from functioning as such,

6. To appreciate the petitioner''s contentions it is necessary to set out certain provisions of the Co-operative Act.

(ft) Section 29 of the (Act as amended retrospectively by Section 10 of the Mysore Co-operative Societies (Amendment Act, 1964), empowering the Government to nominate certain members of the Committee of a Co-operative Society reads:

29. Nominees of the Government on the Committee of a Co-operative Society.-- (1) Where the State Government-

(a) has subscribed to the share capital of a Co-operative Society, or

(b) has assisted indirectly in the formation or augmentation of the share capital of a Co-operative Society as provided in Chapter VI. Or

(c) has guaranteed the repayment of principal and payment of interest on debentures issued by a Co-operative Society, or

(d) has guaranteed the repayment of principal and payment of interest on loans and advances to a Co-operative Society, the State Government or any authority specified by the State Government in this behalf, shall notwithstanding anything contained in this Act or the rules or the bye-laws of the co-operative society, but subject to any notification or order for the time being in force, issued or made u/s 54 or 121, have the right to nominate as its representative not more than three persons.

(2)*****

(3) *****

(4) *****

7. Section 54 of the Act providing for the control by the State Government of a Co operative Society which has received assistance from Government, reads:

54 Control of Society assisted.--Where State aid amounting to not less than two lakhs of rupees is given to any co-operative society, the State Government, if it is satisfied that it is necessary in public interest so to do, may by notification in the official Gazette take power to exercise such control over the conduct of business of such society as shall suffice in the opinion of the State Government to safeguard the interests of the State

8. Section 56 of the Act provides that the provisions of Sections 42 to 54 of Chapter VI shall have effect notwithstanding anything inconsistent therewith contained in this Act or any other law for the time being in force.

9. Section 121 reads-Power to exempt societies.--The State Government may by general or special order published in the official Gazette exempt any cooperative society or any class of societies from any of the provisions of this Act or may direct that such provisions shall apply to such society or class of societies with such modifications as may be specified in the order.

10. Section 130 of the Act provides that every notification issued u/s 64 and every order made u/s 121, shell, as soon as may be, after it is issued or made, be laid before each House of the Legislature while it is in session for a total period of 30 days. The section further provides that the Legislature may modify or rescind such notification or order

11. Bye-law No. 18(a)(v) of the Society as it stood before it was amended by the Impugned Notification (document A) reads:

(v) Six persons including the Chairman to be nominated by the Government of Mysore.

12. The first contention of Mr. V. Krishna Murthy, learned Counsel for the petitioner, is that Section 29 of the Co-operative Act empowers the Government to nominate as its representatives not more than 3 persons as members of the Committee of a Co-operative Society and that neither Section 64 nor Section 121 of the Act can empower the Government to increase the number of nominated members from 3 to 6 or nominate the Chairman from out of such 6 persons. Alternatively. Mr. Krishna Murthy contended that if the scope of Sections 54 and 121 be read as enabling the Government to so modify Section 29 of the Act as to empower the nominating of 6 members and one of them as Chairman, Sections 64 and 121 of the Act should be struck down as amounting to unconstitutional delegation of power to the Government

13. Mr. Krishna Murthy also contended that delegation of power by the Legislature to Government under Sections 54 and 121, was violative of Article 14 of the Constitution as such delegation would he uncontrolled and un-guided

14. We shall now proceed to examine these contentions

15. It was urged by Mr. Krishna Murthy that the power of control conferred by Section 54 on the Government over a Society which receives State aid, cannot be understood as including the power to increase the number of nominated members to the Committee of that Society beyond what is provided in Section 29 or the power to nominate the Chairman and/or the Managing Director But Mr. Krishna Murthy seems to ignore that Section 29 of the Co-operative Act (as amended by Mysore Act 40 of 1964) has itself provided that the number of nominated persons stated therein (as being not more than 3 persons] is subject to any notification or order issued or made u/s 54 or 121 of the Act

16. Mr. Krishna Murthy argued that exercise of control over the conduct of business of a Society which has received aid from the Government as contemplated by Section 54 of the Act, does not include the power to nominate members to the Committee of Management of such Society or the Chairman and/or

Managing Director thereof. While it is true that there are several modes of exercising such control, one effective way of exercising such control is to have a sufficient number of representatives of the Government as members of the Committee of Management and to nominate the Chairman and/or Managing Director therefor. Hence, we are unable to accept the contention of Mr. Krishna Murthy that a notification issued by the Government u/s 54 of the Act, cannot provide for increasing the number of nominated members beyond what is provided in Section 29 and for nominating the Chairman and/or Managing Director.

17. It was next contended by Mr. Krishna Murthy that the power conferred on the Government u/s 121 of the Act to direct that any of the provisions of the Act shall apply to any Society or class of Societies with certain modification does not include the power to substitute add to, or enlarge any of the provisions of the Act in their application to such Society or class of Societies. According to Mr. Krishna Murthy, the word ''modify'' would only mean, limit or restrict but not vary or enlarge

18. The narrow interpretation sought to be placed by Mr. Krishna Murthy on the word ''modify'' does not seem to receive any support from any judicial decision. It is unnecessary to refer to a large number of decisions cited at the Bar in view of what the Supreme Court has stated in The Western India Theatres Ltd. Vs. Municipal Corporation of The City of Poona, . The Supreme Court approved the dictum of Collins M. R. in Stevens v. General Steam Navigation Co Ltd . 1903 1 KB 890. that the term ''modification'' implies an alteration and the word is equally applicable whether the effect of the alteration is to narrow or enlarge the

provisions

19. In Roland Burrow''s Words and Phrases Judicially Defined (Vol 3) at page 399. the following observations of Cooper J., in Souter v Souter. (1921) NZLR 716 are extracted.

One of the primary meanings of the word ''modify'' is no doubt ''to limit'' or ''restrict'', but it also means ''to vary'', and there is authority that it may even mean ''to extend'' or ''enlarge''"

20. Thus we are unable I" accept the contention of Mr. Krishna Murthy that u/s 121 of the Act the Government can only restrict or limit the number of nominated members specified in Section 29 of the Act but cannot increase or enlarge such number or that the Government cannot nominate the Chairman and/ or the Managing Director

21. We shall now consider the alternative contention of Mr. Krishna Murthy. It was urged by him that the Legislature cannot delegate to any one the power to modify the provisions of an Act enacted by the Legislature and that such delegation would amount to abdication of its essential function

22. It is undisputed that a Legislature under the Indian Constitution cannot delegate its essential functions which have been entrusted to it by the Constitution. But the real question is whether conferment by the Legislature on an authority like the Government, the power to modify the provisions of an enactment amounts to delegation of its essential legislative function. This question was considered by the Supreme Court in the reference under Article 143 of the Constitution regarding the Delhi Laws Act AIR 1951 SC 332, Fazl Ali, J., one of the seven learned Judges of the Bench in that case stated thus:

". . . The power of introducing necessary restrictions and modifications is incidental to the power to apply or adapt the law and in the context in which the provision as to modification occurs, it cannot bear the sinister sense attributed to it. The modifications are to be made within the framework of the Act and they cannot be such as to affect its identity or structure or the essential purpose to be served by it.

23. Mukherjea. J., another learned Judge, stated thus:

The word ''modification'' does not, in my opinion, mean or involve any change of policy but it confined to alteration of such a character which keeps the policy of the Act intact and introduces such changes as are appropriate to local conditions of which the executive government is made the judge . . "

24. The views of the different learned Judges who delivered their opinion separately in Delhi Laws Act case, have been summed up thus by Bose, J. (who was himself one of the learned Judges in that Bench) in Rajnarain Singh Vs. The Chairman, Patna Administration Committee, Patna and Another, :

"In our opinion, the majority view was that an executive authority can he authorised to modify either existing or future laws but not in any essential feature Exactly what constitutes an essential feature cannot be enunciated in general terms, and there was some divergence of view about this in the former case, but this much is clear from the opinions set out above: it cannot include a change of policy "

25. From the above statement of law it appears to us that delegation of power to the Government u/s 121 of the Co-operative Act to modify the provisions of the Act in its application to a Society or a class of Societies, is valid only if such modification does not involve any change of the legislative policy of the Act or any change in the essential character of the Act. If such modification Involves any chance in the policy essential character of the Act. such modification would he unconstitutional But if such modification relates to mailers of detail or ancillary or incidental matters then such modification would he valid. Hence we have to examine in each case whether the modification of the provisions of the Act sought to he made by the Government u/s 121 of the Act relates to the policy or essential character of the Act or merely to matters of detail or ancillary or incidental matters

26. Mr. Krishna Murthy strenuously urged that the modification sought to be made by the impugned Notification (document A) is in regard to the policy and essential character of the Act. We see no force in this contention. The policy of the Act appears to us to he to promote co-operative movement. The essential character of the Act is provision for incorporation of Co-operative Societies, regulation. and control of the working of such Societies. The modification sought to be made by the Government under the impugned notification, is to increase the number of nominated Directors of this Society from 3 to 6 and to provide for nomination by the Government of the Chairman and Managing Director. This, modification does not touch the policy of the Act or the essential character of the Act but merely pertains to details of exercise of control by the Government over the Society. Even the democratic character of the Board of Directors, is not altered materially as the nominated Directors are only 6 out of the total number of 16 Directors; the majority of the Directors are still elected by shareholders.

27. Thus the modification brought about by the impugned notification does not go beyond the permissible limit of delegation of power by the Legislature

28. II was argued by Mr. Krishna Murthy that while conferring power on Government u/s 121 of the Act, the Legislature bas not given any guidance as to how the power should be exercised by the Government and hence the conferment of such unguided and uncontrolled power is violative of Article 14 of the Constitution as such power is capable of being abused or exercised arbitrarily.

29. As stated by the Supreme Court in P.J. Irani Vs. The State of Madras, , enough guidance as lo exercise of discretionary power vested in the Government, may be afforded by the preamble and opera-live portions of an Act. The legislative policy of the Act can be gathered from the preamble and the scheme

of the provisions of the Act. It is reasonable to infer that the power conferred on the Government u/s 121 of the Act, to modify the provisions of the Act in their application to any Society or class of Societies, has to be exercised by the Government in furtherance of the object of the Act. and for that purpose, to make suitable changes in the provisions of the Act having regard to the special features of any particular Society or class of Societies

30. Moreover the power is conferred u/s 121 of the Act on a high authority, namely the Government and not on any minor official The Government can be expected to use the power properly and reasonably. In Pannalal Binjraj Vs. Union of india (UOI), . Section 5(7A) of the Indian Income Tax Act, 1922, was impugned as conferring uncontrolled and unguided power on the Com- missioner of Income tax and the Central Board of Revenue to transfer any case from one Income Tax Officer to another Repelling that " contention, the Supreme Court stated thus:

" Even if there is a possibility of discriminatory treatment of persons falling within the same group or category, such possibility cannot necessarily invalidate the piece of legislation It may also lie remembered that this power is vested not in minor officials hut in lop- ranking authorities like the Commissioner of income tax and the Central Board of Revenue who act on the information supplied to them by the Income Tax Officers concerned. This power is discretionary and not necessarily discriminatory and abuse of power cannot he easily assumed where the discretion is vested in such high officials There is moreover a presumption that public officials will discharge their duties honestly and in accordance with the rules of law There may he cases where improper execution of power will result in injustice to the parties. As has been observed, however, the possibility of such discriminatory treatment cannot necessarily in validate the legislation and where there is an abuse of such power, the parties aggrieved are not without ample remedies under the law, What will be struck down in such cases will not be the provision which invests the authorities with such power but the abuse of the power itself "

31. In view of the above pronouncement of the Supreme Court it is clear that the conferment of power u/s 121 of the Act cannot be invalidated on the ground of mere possibility of abuse of such power by Government which is a high authority. If in any particular case it is established that the exercise of power by Government is arbitrary or discriminatory, then the exercise of such power by Government will be struck down by Courts, In the present case. Mr. Krishna Murthy has not shown that the exercise of that power by Government in issuing the impugned notification (document A) has been arbitrary or discriminatory. Having regard to the large financial aid given by Government to the Society and the need for safeguarding the interests of the Government by ensuring that the Society applies properly the aid given by the Government and manages its business so as to be able to repay the loans granted or guaranteed by Government, the modification made by Government for providing for nomination

of 6 Directors of whom one shall be the Chairman, and Managing Director, cannot be said to be'' unreasonable or arbitrary Further all the Directors nominated by the Government are senior officers in several departments which have intimate relation to the Sugar Factory run by the Society

32. It was also contended by Mr. Krishna Murthy that though Section 130 of the Cooperative Act provides that any notification or order issued or made by Government under Sections 64 and 131 shall be placed before the Legislature as soon as may be, the Government has not placed the impugned notification (document A) and the impugned order (document B) before the Legislature as required by this Section

33. It has not been denied by the learned Special Government Pleader that though the impugned notification and the impugned order were made in June, 1966 they have not yet been placed before the Legislature even to this day although the Legislature was in session more than once during this interval. The explanation offered on behalf of the State for not so doing is that this Court had, after admitting this petition, issued an interim order and hence the Government was under a bona fide belief that it should not place the impugned notification and the order before the Legislature until their validity was decided by this Court. Whether the view taken by Government is correct or not it cannot be said that the Government could not have bona fide believed so The learned Special Government Pleader, after consulting the Government, has assured us that if the impugned notification and the order are held to be valid, then, they would be placed before the Legislature soon after our decision in these circumstances, it cannot be said that there is non-compliance with the requirement of Section 130 of the Act.

34. Finally, Mr. Krishna Murthy contended that as bye-law 18(a) of the Society was declared as being ultra vires by this Court in Kampanna Reddy v. State of Mysore. (1966) 1 Mys IJ 243, that bye-law could not be amended by the impugned notification (document A). It is unnecessary for us to consider whether bye-law 18(a)(v) became non esl by reason of its being declared ultra vires or whether it was under an eclipse so LONG as it was inconsistent with the relevant Act and the Rules thereunder and whether this bye-law could be amended so as to remove any inconsistency with the Co-operative Act as now in force and the Rules there-under Because even apart from that amended bye-law, the modification of the provision of the Act made by the impugned notification would be sufficient to enable the Government to nominate 6 Directors and one of them as Chairman and Managing Director.

35. The result is this petition fails and is dismissed: but in the circumstances, we make no order as to costs

36. Petition dismissed.

